UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INWOOD MATERIAL TERMINAL, LLC,
Employer,

Case No. 29 RD 206581

And

CARLOS CASTELLON,
Petitioner,

And

UNITED PLANT & PRODUCTION WORKERS
LOCAL 175 P,
Intervenor.

BRIEF IN SUPPORT OF UNITED PLANT & PRODUCTION WORKERS, LOCAL 175 P's POSITION THAT EMAILS EXCHANGED IN THIS CASE WERE SUFFICIENT TO CONSTITUTE A SIGNED AGREEMENT THAT WOULD ESTABLISH A CONTRACT BAR

Respectfully Submitted,

Eric B. Chaikin, Esq.
Counsel to Local 175 P
375 Park Avenue, Suite 2607
New York, New York 10152
(212) 688-0888
fax: (212) 594-5064
chaikinlaw@aol.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

INTRODUCTION

The United Plant & Production Workers, Local 175 P, (herein the Union) was Certified as the collective bargaining representative of workers employed by Inwood Material Terminal, LLC, (herein the "Employer), on September 20, 2016. Initially the Employer refused to meet with the Union, but after filing of 8(a)(5) charges the Employer agreed to meet, the charges were settled, and the parties met consistently through out the period until the end of June, 2017 when the parties came to a meeting of the minds and agreed to a final contract. The Employer's attorney, Aislinn McGuire, Esq., who had been maintaining and updating the draft of the agreement all along as items had been agreed upon, after some urging by Union counsel[1], prepared and forwarded by email, as she had done with previous drafts, a final execution draft for signature noting only that the "working dues amount needs to be added.[2] That email was forwarded on July 17, 2017, several weeks after the Employer's owner and the Union's Manager had actually reached agreement at the end of June, 2017, shook hands at the bargaining table, and directed Employer's Counsel to update and finalize the contract's prior drafts of Agreement.

---

[1] By email to Employer's Counsel dated July 17, 2017, Union Counsel asked what was happening with the presentation of the written agreement that had been reached weeks earlier after the Union had accepted Employer's Counsel's final proposal with the Employer's Owner present negotiating in the room. Union Counsel complained that the failure to expeditiously forward the document for execution was eroding the term of the agreement unfairly; as it was supposed to start July 1, 2017 and provide an immediate wage increase to workers. (Union Exhibit 6)

[2] Factually, the working dues amount had been set forth in several prior drafts, notably in the March 7, 2017 draft prepared by Employer's counsel; of $1.50 per hour worked. No reason why it was absent from the final draft was provided.

An email forwarded and signed off on by Employer's Counsel, Aislinn McGuire, Esq., on July 17, 2017, apologized, explained the delay in providing the final document, and confirmed "here is the final" draft; and that "the working dues amount needed to be added." (See Union Ex. 6) The Union immediately inserted the working dues amount into the final draft, executed the contract sent to it as "the final" by Employer's Counsel, and returned it to the Employer's Counsel dating it effective July 17, 2017.

On July 19, 2017, by email, Union's Counsel inquired of Employer's Counsel, when could they expect to receive back from Bill Haugland [the owner of the Employer] the signed agreement which had been dated effective July 17, 2017. (Union Ex. 7) The Employer's Counsel responded July 20, 2017: "It is effective July 17—I will send as soon as I receive." The July 20, 2017 email was also signed off on by Aislinn McGuire, Esq. (Union Ex. 7).

On July 26, 2017 Union Counsel emailed Employer's Counsel again noting that the union had signed the final draft of the agreement; that the Employer had acknowledged its receipt; and that it would have been simple to get and forward the Employer's signature on the document that contained the terms and conditions that the Employer had offered, (both at the bargaining table and in the final draft), thru its Counsel on July 17, 2017; which offer had been accepted, executed and delivered back to the Employer. That July 26, 2017 email specifically asked "is Billy reneging; is it on the way; will you be sending it today? What? Fred's members are asking him for a copy." (Union Ex. 8)

The response came from Billy Haugland II, the owner himself, in an email he sent from his iPhone forwarded to Union Counsel on July 26, 2017 by Aislinn McGuire, Esq. (Employer's Counsel). That email stated: "Please just let them know I have been away and will complete the *last technicality* as soon as I physically can. *There is no reneging taking place.*" (Emphasis added)(See Union Exhibit 8)[3]

What is the reasonable import of the above referenced exchange of emails? What would reasonable people discern from them? It is clear that there was the distribution of a final draft of the collective agreement with all elements of a full agreement contained therein. The terms and conditions of the agreement were set forth with particularity; and contained substantial terms and conditions of employment governing the workers that presumably tended to stabilize the bargaining relationship between the parties. At the time that the emails were exchanged there was no dispute as to whether a meeting of the minds had been reached. As the owner succinctly stated in his email to his lawyer that was forwarded to the Union: "Please just let them know I have been away and will complete the last technicality as soon as I physically can. *There is no reneging taking place.*" (Emphasis supplied)

From the offer and delivery by the Employer's Counsel of the final agreement; to the Union's execution and delivery back to the employer of that final agreement; and from the assurances given by the employer's Counsel that the

---

[3] In addition to the emails described herein there was also an email dated August 15, 2017 where the Employer's Counsel confirmed that a wage increase retroactive to July 17, the effective date of the contract, as required by the contract, would be paid promptly and that she expected to have a signed copy of the agreement today or tomorrow. (Union Exhibit 9)

agreement was effective July 17, 2017 and would be forthcoming; to the assurance from the Employer's Owner that no reneging was taking place and that the last "technicality" would be performed; and from the email advising that implementation of an agreed upon wage increase would be, (and was) made; can it be said that the emails were sufficient to constitute a signed agreement that would establish a contract bar under NLRB precedent. It is submitted that the answer to that question, in this case, should be a resounding "yes."[4]

THE EXCHANGE OF FINAL DRAFT, EXECUTION AND DELIVERY BY THE UNION AND THE FOLLOWING CONFIRMING EMAILS ESTABLISH A CONTRACT BAR IN THIS CASE

It is established Board precedent that: "In order to constitute a bar a contract need not be encompassed within a single formal document but may consist of an exchange of the written proposal and a written acceptance." *Diversified Services, Inc. d/b/a Holiday Inn of Ft. Pierce and Juanita Godwin, Petitioner, and Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737, AFL-CIO,* 225 NLRB 1092 (1976); *Gaylord Broad., Television Station WVTC,* 250 NLRB 198 (1980)(*Georgia Purchasing,* 230 NLRB 1174 (1977)(where an exchange of telegrams between employer and union, when read in conjunction with prior agreement that it incorporated by reference, evidenced "with adequate precision a continuing contractual relationship between the parties"). In *Diversified* the Employer's

[4] On February 20, 2018 the Regional Director issued her Decision and Direction of Election finding that no Contract Bar Existed relying on *Truserv Corp.,*349 NLRB 227 (2007). A timely Request for Review was submitted to the Board on February 27, 2018. The Request for Review was granted May 7, 2018 by Order of the Board.

counsel forwarded the written terms of the proposed contract that had previously been presented at the bargaining table with a covering letter bearing the signature of the Employer's attorney. The Union took that offered agreement, signed it and returned it to the Employer. The cover letter with Employer Counsel's signature on it and the subsequent signing of the proposal by the union representative, was found to be sufficient to meet the requirements of the Board's Contract Bar rules as set forth in *Appalachian Shale Products Co.,* 121 NLRB 1160 (1958). Because those actions created a Contract Bar subsequently filed Petitions for an Election were dismissed.[5]

In *Diversified* the Union had sent the Employer's attorney a telegram stating that the Union had accepted the Employer's last offer and requested that a collective bargaining agreement be forwarded for signature. Here, it is not contested that in a final face to face bargaining session held at Employer's Counsel's offices at the end of June 2017 that the parties had agreed to the final terms and conditions of a contract, at the table, with the Employer's owner present with his counsel; and that the Union representatives confirmed that the Employer's counsel would update the drafts that previously had been circulated by email and would prepare and forward a final draft for signature.

In *Diversified* the Employer's counsel sent the Union unexecuted copies of the contract based on the parties written agreements during the bargaining and the employer's position taken on unresolved issues. In the accompanying cover letter

---

[5] In *TruServ Corp.* there was no claim that there was a contract bar prior to the filing of the Petition in question. Unlike *TruServ,* the Union here asserted that a contract bar had been effected months prior to the filing of the Petition.

the employer's attorney asked the Union to execute the contract and return it. The Union signed and returned the agreement. In this case, IMT's counsel updated the draft of agreement with the final accepted proposal on a number of items and forwarded it by email, instead of a cover letter, stating "here is the final" which the Union had been expecting to be presented for signature. [6]

In *Diversified* the union sent the employer a signed copy of what had been forwarded to it stating that the parties had a collective agreement. Here the Union also signed and sent to the employer a signed copy of what had been forwarded with only the insertion, as requested by the employer, of the amount of working dues to be withheld from workers wages. In subsequent emails the Union identified the agreement as being effective July 17, 2017; which the Company's counsel confirmed back to Union counsel in an email. (See Union Exhibit 7).

In *Diversified* the Board found that a contract bar had been created. There is no logical reason that the result should not be the same in this case.[7] Moreover, in today's world, emails often substitute for the cover letters of the past. To require

---

[6] On the same day as the forwarding by the employer of the final agreement Union counsel had asked about why the agreement had not previously been presented after having been agreed to weeks earlier; asking: Please advise as to what IMT's intentions are in regard to this matter." The response to that question was receipt of the final agreement the same day. The delivery of the final agreement was obviously taken to mean the parties had an agreement. There was no hint of any disagreement on whether there had been a meeting of the minds.

[7] For an identical result on similar facts see *Liberty House (AMFAC Corp.),* 225 NLRB 869 (1976)(where the employer had set forth an offer in a letter to the Union incorporating numerous terms and conditions of employment to which the Union exhibited its acceptance of the offer by signing the Employer's letter containing the offer. The Board ruled that by signing the Employer's offer, which contained substantial terms and conditions of employment, the Union formed a contract that the Board found was sufficient to bar the instant petition.); *Valley Doctors Hospital, Inc., d/b/a Riverside Hospital,* 222 NLRB 907 (1976); *Appalachian Shale Products Co., 121 NLRB 1160 (1958)*

hard copy cover letters be sent in lieu of emails from a party would be to create a form over substance situation. The Board should take notice of the fact that usage of emails in negotiations is universal and an accepted practice. In fact, the Federal Government and most States now accept email (electronic signatures) in lieu of a signature affixed by hand and agree that such signatures shall have the same validity and effect as the use of a signature affixed by hand. (See *Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sections 7001 et seq.* (where it is stated that a signature, contract or other record relating to such transaction may not be denied legal effect, validity or enforceability solely because it is in electronic form; and a contract relating to such transaction may not be denied legal effect, validity or enforceability solely because an electronic signature or electronic record was used); and the *New York Electronic Signatures and Records Act, N.Y. Technology Law, Art. 3 (1999))* And witness the Board's and various courts acceptance of e-filing all kinds of documents.

In the present case no party disputes the veracity of the emails exchanged between them. The email of the employer's counsel forwarding the final draft was signed off on: "Aislinn S. McGuire, Esq.. So was the email agreeing that the effective date of the agreement was July 17, 2017. The email from owner, Billy Haugland II, dated Wednesday July 26, 2017 was sent by him from his iPhone to his attorney confirming that he would complete, what he viewed as the last technicality, as soon as possible; stating further: please let the union know that "There is no reneging taking place." That email confirms, if nothing else, that an agreement had been made, that a meeting of the minds had occurred; that the employer was not reneging

on the deal previously made that was codified in the final draft; and that the employer fully intended to execute the agreement—a technicality in his mind. (See Union Exhibits 6, 7 & 8)

CONCLUSION

On the basis of the above, and in an effort to stabilize labor relations in general, and in particular in this case, the exchange of emails reflected here should be found to be sufficient to constitute a signed agreement that would establish a contract bar.

Respectfully submitted,
Eric B. Chaikin
Eric B. Chaikin, Esq.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 18, 2018 he e-mailed a true and correct copy of this Brief in support finding that the parties emails were sufficient to constitute a signed agreement that would establish a contract bar to Aislinn McGuire, Esq., counsel for the employer, at her e-mail address amcguire@kmm.com ; and to Brent.Childerhose, Esq., at Region 29, NLRB at his e-mail address Brent.Childerhose@nlrb.gov and mailed a true and correct copy of this Brief to Carlos Castellon, the Petitioner at his home address of 1231 Burlington Place, Valley Stream, New York 11580.

Eric B. Chaikin
Eric B. Chaikin, Esq.